IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

WP(C).No. 6772 of 2007(F)

OS.78/2005 of MUNSIFF COURT, IDUKKI

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PETITIONER:

APPACHAN, S/O JOSEPH, AGED 35 YEARS,
NEERANAL HOUSE, CHERUTHONY P.O.,
IDUKKI VILLAGE, IDUKKI DISTRICT.

BY ADV. SRI.JOICE GEORGE

RESPONDENTS:

1. MARY, W/O ABRAHAM, URUMBIL HOUSE,
   MANIYARANKUDY P.O., IDUKKI DISTRICT.

2. CHACKO @ JOSE, NEERANAL HOUSE,
   CHERUTHONY, IDUKKI DISTRICT.

3. KUNJOONJU JOSEPH, DO. DO.

4. LISSY, W/O KENNADAY, KANJIRATHANAM, DO. DO.

5. LILLY, W/O SONY, EETTICKAKUNNEL, ALPARA P.O.,
   CHELACHUVADU KARA, KANJIKUZHY VILLAGE.

6. SALY, W/O SAVIER, THADATHIL HOUSE,
   EDAPPALLY KARA, ERNAKULAM DISTRICT.

7. SIBI, S/O JOSEPH, NEERANAL, CHERUTHONY,
   IDUKKI DISTRICT.

8. MARIYAM, W/O JOSEPH, NEERANAL,
   BHOOMIYAMKULAM, IDUKKI VILLAGE.

9. VALSA, W/O JOY, KUNNASSERIL, DO. DO.

10. PUSHPA, W/O JOSEPH, NEERANAL, IDUKKI VILLAGE.

11. LEENA, W/O GEORGE, VADAKKEL HOUSE,
    BHOOMIYAMKULAM, IDUKKI VILLAGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

W.P.(C)No. 6772 of 2007 F

JUDGMENT

The petitioner is the fourth defendant in O.S. No.78/05 on the file of the Munsiff's Court, Idukki. The suit is one for partition. On the contentions raised by the defendants Issue No.2 was framed in the suit, as to whether the court fee paid is sufficient or not? The court fee was paid under Section 37(2) of the Kerala Court Fees and Suit Valuation Act (hereinafter referred to as 'the Act').

2. The contention of the petitioner is that there is no pleading in the plaint that the parties are co-owners in joint possession of the scheduled property and therefore, the suit should have been valued under Section 37(1) of the Act. It is not in dispute that for the purpose of court fee, the averments in the plaint will have to be, prima

facie, accepted and an enquiry as to whether the plaintiffs are co-owners in joint possession of the scheduled property along with the defendants, is not contemplated to ascertain as to whether the court fee paid is sufficient in a partition suit.

3. The relevant averments that deserve consideration for the purpose of determining as to whether the court fee paid under Section 37(2) of the Act is proper or not are the averments contained in paragraphs 3 to 5 of Exhibit P1 plaint. They are the following:

> "3. The plaint schedule property belonged to late Sri.Chacko Joseph. He died intestate leaving the plaint schedule property to his legal heirs. On the death of Sri.Chacko Joseph, the plaint schedule property devolved upon the plaintiffs and the defendants.
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> 4. Defendants 2 to 5 are residing in the plaint schedule property. They are managing the property on behalf of other

> legal heirs. There are two buildings in the plaint schedule property. The original document pertaining to the plaint schedule property is deposited with the bank. The tax receipt is produced herewith.
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> 5. The plaintiffs requested the defendants to partition the plaint schedule property and for separate possession. But, they did not heed to their demands. On 10.11.05, the plaintiffs demanded the defendants to co-operate for a partition deed. But, they refused to do so."

The above averments show that the case of the plaintiffs is that on the death of Chacko Joseph, who died intestate, the scheduled property, which belonged to him, devolved upon the plaintiffs and the defendants; that defendants 2 to 5, who are residing in the scheduled property, are managing the property on behalf of other legal heirs as well and that the suit was necessitated as the request

of the plaintiffs, to partition the scheduled property and for separate possession thereof, has been refused by the defendants. The above averments un-mistakenly take me to the conclusion that the case of the plaintiffs is that the property has devolved upon the plaintiffs and the defendants and they are co-owners, though the property is being managed by the defendants, who are residing in the plaint schedule property on behalf of other legal heirs as well. This plea cannot be accepted as a plea to the effect that the plaintiffs are out of possession. On the other hand, it is the definite case that the plaintiffs and the defendants are co-owners in joint possession, though the management of the property is by the defendants, who are residing in the scheduled property. In the above circumstances, as rightly found by the court below, vide Exhibit P3 order, valuation of the suit under Section 37(2) of the Act is proper and that the court fee paid is sufficient.

There is no merit in this writ petition and it is, hence, dismissed.

28th February, 2007 (K.P.Balachandran, Judge)

tkv